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FORFEITURE OF PROPERTY OF INNOCENT PERSONS USED IN VIOLATION OF THE LAW.—Forfeiture of goods to the crown has been common in English law, possibly arising in the royal franchises of deodands. But ready confiscations are apparently repugnant to American ideas as to rights in property, as is evidenced by our constitutional guarantee of due process of law.¹ Thus the extent of confiscation in America is somewhat surprising to one unfamiliar with the subject.

Forfeiture of goods is based on the use of the goods illegally. Probably it was originally due to the supposition that a thing used in the commission of a crime became tainted thereby and unfit for further use by its owner. Thus a weapon used in murder had to be given to the crown. But now such confiscation of goods, not in themselves pernicious, can be justified only on the ground of punishment to the wrongdoer or of prevention of crime. Where the owner is innocent, prevention of crime is the only basis for such confiscation.

When the innocence of the owner is material, it becomes important to notice the nature of the goods involved; whether they are such as to be incapable of innocent use, or whether they belong to the class whose use is strictly regulated. Certain property, as a burglar's kit, while possibly capable of innocent use, is of such a character as practically to charge the owner with knowledge of its improper use by a borrower. Other property is so regulated in its use that the owner, in lending it, must know of the possibility

¹ See *Farmers', etc., Bank v. Dearing*, 91 U. S. 29. "Forfeitures are not favored in the law. Courts always incline against them."

of misuser. This is especially true in cases involving intoxicating liquors.²

Originally the innocence of the owner was regarded as an important factor,³ but recently it has been the tendency of the courts and statutes to disregard the innocence of the owner altogether.⁴ It is competent for the legislature to pass statutes making the owner's innocence immaterial.⁵ Forfeitures frequently occur in admiralty cases, in which the ship is held responsible for the misconduct of its officers and men. A vessel will be confiscated when used for piracy, regardless of the owner's ignorance of its use in this way.⁶ A ship violating an embargo law may be forfeited, irrespective of the owner's ignorance of its acts.⁷ In a Virginia case it was said that the State has power to forfeit vessels engaged in illegal dredging for oysters, regardless of the interests of innocent owners. This case was decided on other grounds, however.⁸

The most prolific single source of forfeitures has been the enforcement of the United States internal revenue laws regarding intoxicating liquors. As a reason for forfeiture, these revenue laws are now being replaced by the prohibition laws. Where the owner knows that his property is being unlawfully used and does not object, as where the owner of land knew an illicit still was in operation thereon,⁹ the property is readily subject to forfeiture. Frequent cases have arisen in which the goods confiscated were transported in vehicles owned by innocent persons. Thus where the owner of a team hired it to another to haul produce to market, and the team was used in illegal transportation of liquors, the innocence of the owner could not prevent the forfeiture of his team.¹⁰ A notable case among the more recent authorities is *United States v. Mincey*.¹¹ Here a farmer sent his employee to

² *Dobbins's Distillery v. United States*, 96 U. S. 395; *United States v. Two Hundred and Twenty Patented Machines*, 99 Fed. 539.

³ The courts have refused to forfeit goods for the violation of revenue laws unless the owner of the goods or his agent is guilty. *United States v. Bags of Kainit*, 37 Fed. 326. See *The Lady Essex*, 39 Fed. 765.

⁴ *United States v. Mincey*, 254 Fed. 287.

⁵ *United States v. One Saxon Automobile*, 257 Fed. 251.

⁶ *United States v. Brig Malek Adhel*, 2 How. 210.

⁷ *United States v. The Little Charles*, 1 Brock. 347, 26 Fed. Cas. 979. In this case Marshall, C. J., said: "This is not a proceeding against the owner; it is a proceeding against the vessel, for an offense committed by the vessel, which is not less an offense, and does not the less subject her to forfeiture, because it was committed without the authority, and against the will of the owner."

⁸ *Boggs v. Commonwealth*, 76 Va. 989.

⁹ *United States v. Distillery*, 25 Fed. Cas. 866; *Dobbins's Distillery v. United States*, *supra*.

¹⁰ *United States v. Two Bay Mules*, 36 Fed. 84. See also *United States v. One Black Horse*, 129 Fed. 167.

¹¹ *Supra*. In his dissenting opinion, Batts, Circuit Judge, said: "That the powers incidental to taxation are necessarily strong, and that in their practical administration inequalities and injustices almost neces-

town in an automobile to bring back lawful merchandise. On the trip the car was used for the illegal transportation of intoxicating liquors. Despite the owner's ignorance of this use, the car was forfeited, one of three judges dissenting. This case gives the settled rule under the Federal statute.¹²

There are two possible qualifications of the statement that property will be forfeited regardless of the interests of innocent parties. The rights of a lienholder are sometimes protected, as are the rights of the owner when the property subsequently used unlawfully is taken from him without his consent. It has been held that where a mortgage on premises subsequently occupied by a brewery was given before the premises were unlawfully used, subsequent illegal use would not affect the rights of the mortgagee.¹³ The same conclusion was reached by the North Carolina court in a similar case.¹⁴ This court also refused to forfeit the interests of a mortgagee in an automobile used in the illegal transportation of liquor.¹⁵ However, there seems to be no real reason for the distinction between an innocent mortgagee and an innocent owner, other than possibly that the person using the property has it with the owner's, though not always with the mortgagee's, consent. Consequently, the rule exempting an innocent mortgagee has been repudiated by the Circuit Court of Appeals of the fourth circuit. Here an automobile used in the unlawful transportation of liquor was forfeited, the interests of an innocent mortgagee being disregarded.¹⁶

The one real exception to the rule allowing forfeiture of the goods of innocent owners (applying even though no exemption is expressed in the statute) is, then, where the goods are obtained without the consent of the owner or against his will. When goods are stolen from the owner, no act of the thief can cause their forfeiture.¹⁷ The reason for the exception in these cases of theft and fraud is that no right of custody or possession can be derived from a thief or trespasser, because he has no such right in the goods. In legal contemplation the goods are still in the possession of the owner; hence no right to them can be based on the possession of the thief, which is in law a nullity.¹⁸

In the recent Virginia case of *Landers v. Commonwealth*, 101 S. E. 778, the owner of an automobile sent it to Baltimore for repairs. On the return trip the driver brought back a quantity of intoxicating liquors. In an information to enforce forfeiture of the automobile, the owner set up her innocence as a defense. It

sarily result, can afford no justification for the disregard of basic rights which the government was formed to protect."

¹² *Logan v. United States*, 260 Fed. 746.

¹³ *United States v. Stowell*, 133 U. S. 1.

¹⁴ *Glenn v. Winstead*, 116 N. C. 451, 21 S. E. 395.

¹⁵ *Skinner v. Thomas*, 171 N. C. 98, 87 S. E. 976.

¹⁶ *United States v. One Saxon Automobile*, *supra*. This case reversed the decision of the District Court for the Western District of Virginia.

¹⁷ See *The Lady Essex*, *supra*.

¹⁸ See *United States v. One Saxon Automobile*, *supra*.

was held that the automobile was forfeited, regardless of the innocence of the owner. The prosecution was had under the Prohibition Act of 1918.¹⁹ As has been shown above, the legislature may make the owner's innocence immaterial. Here the court declared that the test of liability is the guilty knowledge of "the person in charge." If the person in charge has such knowledge, the vehicle is liable, although the owner is ignorant of its unlawful use.

PARTIAL PAYMENT BY ONE JOINT DEBTOR TOLLING STATUTE OF LIMITATIONS AS TO ALL.—Where several persons are jointly liable for a debt, there is grave dispute as to whether a partial payment by one of them, without the knowledge, consent or direction of the others, suspends the running of the statute of limitations as to all of the co-debtors. There is a sharp division of authorities on this question, many States of this country being on each side.

As far back as 1781, an English court had this question before it for adjudication, and after due consideration reached the conclusion that a partial payment by one joint debtor suspends the running of the statute of limitations, not only as to the one paying, but also as to the co-debtors.¹ The decision in this case is brief, but the reasoning of the court is that payment by one is payment for all, the one acting virtually as agent for the others. Also the co-debtors, having the advantage of the partial payment must therefore be bound thereby.

During the early period of our history this English decision was followed in many of the States and now the doctrine therein set forth is law in Arkansas,² Georgia,³ Missouri,⁴ New Jersey,⁵ North Carolina,⁶ Oregon,⁷ Rhode Island,⁸ South Carolina⁹ and probably other States. The arguments on reason and principle in support of this view are not numerous and all seem more or less to have their origin in *Whitcomb v. Whiting*.¹⁰ To suspend the statute in any case there must be an admission of the debt and a

¹⁹ Acts 1918, c. 388, § 57.

¹ *Whitcomb v. Whiting*, 2 Doug. 652.

² *Hicks v. Lusk*, 19 Ark. 692.

³ *Tillinghast v. Nourse*, 14 Ga. 641; *Brewster v. Hardeman*, Dud. Ga. 138.

⁴ *Harris v. Stewart*, 197 Mo. App. 489, 196 S. W. 1033; *Kemble v. Logan*, 79 Mo. App. 253; *Block v. Dorman*, 51 Mo. 31; *Craig v. Callaway County Court*, 12 Mo. 94.

⁵ *Corlies v. Fleming*, 30 N. J. L. 349.

⁶ *Moore v. Beaman*, 111 N. C. 328 16 S. E. 177; *Green v. Greensboro College*, 83 N. C. 449; *Woodhouse v. Simmons*, 73 N. C. 30.

⁷ *Partlow v. Singer*, 2 Ore. 307.

⁸ *Woonsocket Savings Inst. v. Ballou*, 16 R. I. 351, 16 Atl. 144, 1 L. R. A. 555.

⁹ *Smith v. Caldwell*, 15 Rich. Law 365; *Silman v. Silman*, 2 Hill Law 416.

¹⁰ *Supra*.